

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Market Entry and Regulation of )  
Foreign-affiliated Entities )

IB Docket No. 95-22

**REPLY COMMENTS OF CITICORP**

Citicorp hereby replies to the comments that were filed in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding on April 11, 1995.<sup>1</sup>

**I. INTRODUCTION**

In its initial comments, Citicorp explained that the interests of users are best served by a regulatory environment that promotes the widespread availability of new, innovative and moderately priced telecommunications services from a multitude of service providers. Accordingly, Citicorp urged the Commission to ensure that any market entry standard has the effect of promoting, rather than retarding, competition in the international telecommunications services marketplace. Upon review of the many comments filed in this proceeding it should become readily apparent that very few were submitted by users. Citicorp has therefore decided

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<sup>1</sup> See Market Entry and Regulation of Foreign-affiliated Entities, Notice of Proposed Rulemaking, IB Docket No. 95-22, FCC 95-53 (released Feb. 17, 1995) [hereinafter "Notice"].

to file these reply comments to provide the Commission with a user perspective on the views expressed in the initial round of comments.

## **II. THE COMMENTS HIGHLIGHT THE COMPETITIVE RISKS OF A RIGID MARKET ENTRY TEST.**

Many of the parties filing comments agreed with Citicorp that the Commission should adopt a flexible approach in considering foreign carrier market entry.<sup>2</sup> Others, however, would have the Commission adopt a more rigid market access test.<sup>3</sup> Such an inflexible standard would be contrary to the public interest and should be rejected by the Commission.

As many commenters correctly observed, a restrictive market entry test would defeat the Commission's primary goal in this proceeding: the "promotion of effective competition in the global market."<sup>4</sup> Instead of promoting competition, a restrictive market entry standard would only serve to shield U.S. carriers from foreign competition.<sup>5</sup> Plainly, users are not served by limiting competition and denying foreign carriers access to the U.S. market.<sup>6</sup> Therefore, instead of adopting a policy that deprives users of the benefits of competition --

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<sup>2</sup> See Comments of Telelobe Inc. at 32 (Apr. 11, 1995) [hereinafter "Telelobe Comments"]; NYNEX Comments at 2 (Apr. 11, 1995) [hereinafter "NYNEX Comments"]; Comments of LDDS Communications, Inc. at 5 (Apr. 11, 1995) [hereinafter "LDDS Comments"]; Comments of Secretary of Communications and Transportation of Mexico at 11-13 (Apr. 11, 1995) [hereinafter "Mexico Comments"]; Comments of Cable & Wireless at 4 (Apr. 11, 1995) [hereinafter "C&W Comments"].

<sup>3</sup> See Comments of AT&T at 19-38 (Apr. 11, 1995); Comments of BT North America Inc. at 2 (Apr. 11, 1995); Comments of MCI Telecommunications, Inc. at 7 (Apr. 11, 1995).

<sup>4</sup> Notice at ¶ 27.

<sup>5</sup> See Telelobe Comments at 29.

<sup>6</sup> To the contrary, the Commission has concluded that "allowing foreign carrier entry into the U.S. international services market will further the public interest by providing additional competition that will benefit consumers." Notice at ¶ 1 (emphasis added).

expanded choices, greater innovation and lower prices -- the Commission should consider market access as but one of several factors to be weighed in evaluating the public interest in expanded foreign carrier participation in U.S. markets.<sup>7</sup>

In addition to denying U.S. consumers the benefits of additional competition, a rigid market access test would frustrate the Commission's goal of "encourag[ing] foreign governments to open their communications markets [to U.S. carriers]."<sup>8</sup> As explained by a number of commenters, both foreign and domestic, the market entry standard proposed by the Notice -- standing alone -- is unlikely to succeed in opening overseas markets.<sup>9</sup> Indeed, there is a possibility that rigid application of the proposed entry standard could provoke foreign governments to retaliate against U.S. carriers and the value-added networks that provide many U.S. businesses with access to the global marketplace.<sup>10</sup> Thus, rather than providing users with the benefit of enhanced competition, a restrictive market access test could actually harm users

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<sup>7</sup> In its Notice, the Commission recognized that there may be "times when public interest factors other than comparable market access might be decisive on the issue of entry." Id. at ¶ 41.

<sup>8</sup> Id. at ¶ 26.

<sup>9</sup> The decision whether to open a foreign market to U.S. carriers is likely to turn on various political and economic concerns which outweigh the economic benefits of gaining access to the U.S. market. See LDDS Comments at 8; Teleglobe Comments at 24-25; Comments of Deutsche Telekom AG at 28 (Apr. 11, 1995) [hereinafter "Deutsche Telekom Comments"]; Comments of Sprint at 18 (Apr. 11, 1995) [hereinafter "Sprint Comments"].

<sup>10</sup> See Sprint Comments at 20-23; LDDS Comments at 1; NYNEX Comments at 2; Comments of DOMTEL Communications, Inc. at 3 (Apr. 11, 1995); Mexico Comments at 11; Deutsche Telekom Comments at 32; Comments of Telex-Chile, S.A. at 3 (Apr. 11, 1995); Comments of France Telecom at 16 (Apr. 11, 1995) [hereinafter "France Telecom Comments"].

by disrupting the networks upon which they currently rely to conduct their international business operations.

An inflexible market access standard could also undermine the integrity of U.S. trade policy.<sup>11</sup> As explained by the National Telecommunications and Information Administration, trade is not within the primary jurisdiction of the Commission.<sup>12</sup> Citicorp therefore concurs in Dr. Jonathan Aronson's recommendation that the Commission take steps to ensure that its positions are "consistent with ongoing multilateral talks related to liberalization of the international communications market and trade in telecommunications services and equipment."<sup>13</sup> In this regard, several commenters suggest that it would be more appropriate to encourage further liberalization of foreign markets through multilateral negotiations, rather than by the unilateral approach proposed by the Commission.<sup>14</sup> In particular, these commenters point to the World Trade Organization as the appropriate forum for promoting the liberalization of foreign markets. These suggestions are not without merit. By avoiding a restrictive market entry standard, the Commission can help ensure that its actions are not improperly construed as an indication that the U.S. Government's commitment to competition in the international telecommunications services market is waning.

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<sup>11</sup> For example, an inflexible market access test would threaten to close markets that the U.S. Government has worked hard to open to U.S. carriers.

<sup>12</sup> See Comments of NTIA at 4-11 (Apr. 11, 1995); Sprint Comments at 23-25; C&W Comments at 3; Comments of Motorola, Inc. at 9 (Apr. 11, 1995); Deutsche Telekom Comments at 14..

<sup>13</sup> Comments of Professor Jonathan D. Aronson at 2 (Apr. 11, 1995).

<sup>14</sup> See Comments of British Government at 16-17 (Apr. 11, 1995); Comments of French Ministry of Posts and Telecommunications at 2 (Apr. 11, 1995).

In its initial comments, Citicorp suggested a relatively straightforward means by which the Commission could avoid the pitfalls of mirror image reciprocity. More specifically, Citicorp urged the Commission to make clear that it would consider market access as but one element of a flexible and multifaceted public interest standard. Other commenters took a somewhat different approach and cautioned the Commission against focusing on discrete market segments in evaluating market access.<sup>15</sup> They, like Citicorp, however, urged the Commission to maintain flexibility in assessing market entry so as to avoid retaliation against U.S. carriers or interfering with U.S. trade policy and multilateral negotiations.<sup>16</sup>

In this regard, Citicorp also urged the Commission to frame its public interest standard broadly and, in addition to favoring U.S. carrier access to foreign markets, to consider the extent to which the needs of users are being satisfied by foreign carriers in their country of origin. Among the factors which Citicorp urged the Commission to consider are the extent to which users can: interconnect international private lines to the public switched network and to private networks; own and operate private intra-corporate earth station networks; use international Freephone Services from and in foreign markets; and benefit from joint ventures and non-exclusive co-marketing agreements that allow for one-stop international telecommunications shopping. By considering the full range of options available to users, the Commission will be in a better position to evaluate whether U.S. users would benefit from the

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<sup>15</sup> See Tele globe Comments at 32; France Telecom Comments at 15; C&W Comments at 3.

<sup>16</sup> See Tele globe Comments at 32; France Telecom Comments at 15; C&W Comments at 3.

entry of particular foreign carriers into U.S. markets. Moreover, by considering such factors, the Commission will give foreign carriers an incentive to respond to the needs of users without needlessly inviting retaliatory measures.

**III. THE COMMISSION SHOULD REJECT REQUESTS TO EXPAND THE SCOPE OF THIS RULEMAKING.**

In the Notice, the Commission tentatively decided to limit its proposed market entry test to "those potential entrants that are 'affiliated' with a 'foreign carrier.'"<sup>17</sup> Citicorp applauded this decision. Others, such as NYNEX and ACC Global Corp, however, would have the Commission subject co-marketing agreements and, more generally, joint ventures to its proposed entry test.<sup>18</sup> The Commission should reject these proposals.

As Citicorp explained in its initial comments, users derive substantial benefits from joint ventures and non-exclusive co-marketing arrangements, such as "one-stop" shopping, seamless interconnection, and more reliable service. Subjecting these and similar arrangements to market entry review would only serve to inhibit competition by discouraging such alliances. It would also create opportunities for entrenched carriers to use the Commission's processes to thwart competition in the global telecommunications marketplace.

This is not to say that joint ventures and co-marketing arrangements should be ignored by the Commission. As the Notice correctly points out, joint ventures and co-marketing

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<sup>17</sup> Notice at ¶ 52.

<sup>18</sup> See NYNEX Comments at 12; Comments of ACC Global Corp. at 10 (Apr. 11, 1995).

agreements give carriers an incentive to discriminate in favor of their foreign business partners.<sup>19</sup> To curtail this anticompetitive incentive, the Commission should make clear that it will not tolerate practices that deny users the right to secure telecommunications services from the carriers of their choice.

The Commission should also affirm its tentative decision not to apply its proposed market access test to resellers of international private lines that are connected to the public switched network.<sup>20</sup> None of the commenters that suggest otherwise has offered any evidence to rebut the Commission's tentative conclusion that its International Resale Policy decision is "sufficient to ensure that a foreign monopoly carrier would be unable to exploit its market power with respect to its provision of interconnected private line services."<sup>21</sup> Similarly, Citicorp urges the Commission to adopt its tentative decision not to extend its market entry review to private carriers and enhanced service providers. No one has taken issue with the Commission's conclusion and Citicorp is unaware of any reasons why the Commission should needlessly expand the scope of its Title II regulation.<sup>22</sup>

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<sup>19</sup> See Notice at ¶ 62.

<sup>20</sup> See id. at ¶ 77; see also Comments of IDB Communications at 18-25 (Apr. 11, 1995); Comments of K&S International Communications at 6 (Apr. 11, 1995).

<sup>21</sup> Notice at ¶ 77.

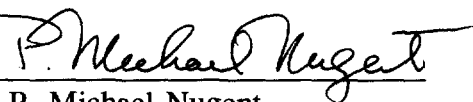
<sup>22</sup> See id. at ¶ 80.

#### IV. CONCLUSION

For all of the reasons set forth above and in Citicorp's initial comments, the Commission should reject the rigid application of its proposed market access test. Instead, the Commission should consider market access as but one aspect of a multifaceted public interest standard.

Respectfully submitted,

CITICORP

By: 

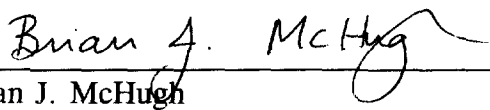
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May 12, 1995



## CERTIFICATE OF SERVICE

I, Brian J. McHugh, hereby certify that I have this twelfth day of May, 1995 served a copy of the foregoing Reply Comments of Citicorp upon the parties set forth in the attached service list, by first class mail, postage prepaid.

  
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Brian J. McHugh

May 12, 1995